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Investigation  
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AD/CVDOps/II/TKS/RMJ

DATE: August 7, 2017

MEMORANDUM TO: Carole Showers  
Executive Director, Office of Policy  
performing the duties of  
Deputy Assistant Secretary for Enforcement and Compliance

FROM: James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Countervailing Duty Investigation of Silicon Metal from  
Kazakhstan

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## I. SUMMARY

We preliminarily determine that countervailable subsidies are being provided to exporters and producers of silicon metal from Kazakhstan, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

On March 8, 2017, the Department received countervailing duty (CVD) petitions concerning imports of silicon metal from Australia, Brazil, and Kazakhstan and antidumping duty (AD) petitions concerning imports of silicon metal from Australia, Brazil, and Norway, filed in proper form on behalf of Globe Specialty Metals, Inc. (the petitioner).<sup>1</sup> On March 28, we initiated CVD investigations on silicon metal from Australia, Brazil, and Kazakhstan.<sup>2</sup>

On April 4, 2017, we issued the CVD questionnaire to the Government of Kazakhstan (GOK) and instructed the GOK to forward the questionnaire to Tau-Ken Temir LLP (Tau-Ken Temir)

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<sup>1</sup> See “Silicon Metal Australia, Brazil, Kazakhstan, and Norway; Antidumping and Countervailing Duty Petitions,” dated March 8, 2017 (Petitions).

<sup>2</sup> See *Silicon Metal from Australia, Brazil, and Kazakhstan: Initiation of Countervailing Duty Investigations*, 82 FR 16356 (April 4, 2017) (*Initiation Notice*). On April 4, 2017, we also published the initiation of AD investigations on silicon metal from Australia, Brazil, and Norway (see *Silicon Metal from Australia, Brazil, and Norway: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 16352 (April 4, 2017)).



and LLP Metallurgical Combine Kaz Silicon (KazSilicon), the two respondents identified in the Petitions.<sup>3</sup> On April 18, 2017, KazSilicon filed a letter stating that it stopped producing silicon metal as of November 1, 2015, and that it never exported silicon metal to the United States.<sup>4</sup> To determine whether KazSilicon had entries of silicon metal, we requested U.S. import data from U.S. Customs and Border Protection (CBP). On April 26, 2017, we issued a memorandum noting that our review of this CBP data showed no entries of silicon metal from Kazakhstan manufactured by KazSilicon during the period of investigation (POI).<sup>5</sup>

Also on April 26, 2017, we received a response to the affiliation portion of the questionnaire Tau-Ken Temir.<sup>6</sup> On May 3, 2017, we issued a supplemental affiliation questionnaire to Tau-Ken Temir, requesting that the company provide a full response to the Department's questionnaire on behalf of not only itself, but also its cross-owned affiliates JSC NMC Tau-Ken Samruk (Tau-Ken Samruk), LLP Silicon Mining (Silicon Mining), and any other affiliated company that is potentially cross-owned with Tau-Ken Temir.<sup>7</sup> On May 3, 2017, we also issued additional questions to the GOK, to which the GOK responded on May 12, 2017.<sup>8</sup>

On May 15, 2017, Tau-Ken Temir submitted its response to the supplemental affiliation questionnaire in which it asserted that neither Tau-Ken Samruk or Silicon Mining were cross-owned companies and, thus, it should not have to respond to the Department's questionnaire for these affiliated companies.<sup>9</sup>

On May 16, 2017, the Department postponed its preliminary determinations in these investigations at the request of the petitioner until no later than August 7, 2017.<sup>10</sup>

On May 31, 2017, we received a response to the initial CVD questionnaire from Tau-Ken Temir.<sup>11</sup> Tau-Ken Temir only responded on behalf of itself, despite the Department's explicit direction to submit full questionnaire responses for Tau-Ken Samruk, Silicon Mining, and any other potentially cross-owned companies.

On June 1, 2017, the GOK timely filed its response to the initial questionnaire.<sup>12</sup> In this same month, the petitioner filed new subsidy allegations related to equity infusions, loans, and debt

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<sup>3</sup> See Department Letter re: Countervailing Duty Investigation of Silicon Metal from the Republic of Kazakhstan: Countervailing Duty Questionnaire, dated April 4, 2017.

<sup>4</sup> See KazSilicon's April 4, 2017 Affiliation Response.

<sup>5</sup> See Memorandum, "Release of Results of U.S. Customs and Border Protection (CBP) Data Query," dated April 26, 2017.

<sup>6</sup> See Tau-Ken Temir's April 26, 2017 Affiliation Response (Tau-Ken Temir AFFR).

<sup>7</sup> See Department Letter re: Countervailing Duty Investigation of Silicon Metal from the Republic of Kazakhstan, dated May 3, 2017.

<sup>8</sup> See Department Letter re: Additional Questions for the Government of Kazakhstan (GOK), dated May 3, 2017; the GOK's May 12, 2017 Responses to Additional Questions (GOK May 12, 2017 RAQ).

<sup>9</sup> See Tau-Ken Temir's Supplemental Affiliation Response, dated May 15, 2017 (Tau-Ken Temir May 15, 2017 SAFFR).

<sup>10</sup> See *Silicon Metal from Australia, Brazil, and Kazakhstan: Postponement of Preliminary Determinations of Countervailing Duty Investigations*, 82 FR 22490 (May 16, 2017).

<sup>11</sup> See Tau-Ken Temir's May 31, 2017 Initial Questionnaire Response (Tau-Ken Temir May 31, 2017 IQR).

<sup>12</sup> See GOK's June 1, 2017 Initial Questionnaire Response (GOK June 1, 2017 IQR).

forgiveness.<sup>13</sup> On July 6, 2017, the Department initiated an investigation on the debt forgiveness new subsidy allegation and issued questionnaires to the GOK and Tau-Ken Temir related to this new subsidy allegation.<sup>14</sup> The GOK and Tau-Ken Temir timely filed responses to the new subsidy allegation questionnaire.<sup>15</sup>

On July 10, 2017, the petitioner requested that the Department align the final determination of this investigation with the final determinations in the companion AD investigations of silicon metal from Australia, Brazil, and Norway.<sup>16</sup>

### III. PERIOD OF INVESTIGATION

The POI is January 1, 2016, through December 31, 2016. This period corresponds to the most recently completed calendar year, in accordance with 19 CFR 351.204(b)(2).

### IV. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,<sup>17</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.<sup>18</sup> Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.<sup>19</sup> We have evaluated the scope comments filed by the interested parties, and we are not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.<sup>20</sup> In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties, and we will issue a final scope decision after considering any comments submitted in scope case and rebuttal briefs.

### V. RESPONDENT SELECTION

Section 777A(e)(1) of the Act directs the Department to determine an individual countervailable subsidy rate for each known exporter/producer of subject merchandise. As noted in the *Initiation Notice*, we selected Tau-Ken Temir and KazSilicon as the mandatory respondents based on

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<sup>13</sup> See Letter from the petitioner, "Silicon Metal from Kazakhstan; Countervailing Duty Investigation; Allegations That Tau-Ken Temir Received Additional Countervailable Subsidies," dated June 7, 2017 (New Subsidy Allegations).

<sup>14</sup> *Id.*, Department Letters re: New Subsidy Allegations Questionnaire, dated July 6, 2017.

<sup>15</sup> See Tau-Ken Temir's July 19, 2017 New Subsidy Allegation Questionnaire (Tau-Ken Temir NSAR); and the GOK's July 24, 2017 New Subsidy Allegation Questionnaire (GOK NSAR).

<sup>16</sup> See Letter from the petitioner, "Silicon Metal from Australia, Brazil, and Kazakhstan; Countervailing Duty Investigations; Request for Alignment of Final Determinations," dated July 10, 2017.

<sup>17</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>18</sup> See *Initiation Notice*, 82 FR at 16357.

<sup>19</sup> See Memorandum, "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Scope Comments Decision Memorandum for the Preliminary Determinations," dated June 27, 2017 (Preliminary Scope Decision Memorandum).

<sup>20</sup> *Id.*

information contained in the Petitions that identified these companies as the only known producers/exporters of silicon metal from Kazakhstan.<sup>21</sup> As noted above, our CBP data query showed no POI entries of silicon metal from Kazakhstan manufactured by KazSilicon.<sup>22</sup> Therefore, because KazSilicon had no shipments of the merchandise under investigation during the POI and we know of no additional producers/exporters of silicon metal from Kazakhstan,<sup>23</sup> we examined Tau-Ken Temir as the sole mandatory company respondent in this proceeding.

## **VI. INJURY TEST**

Because Kazakhstan is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Kazakhstan materially injure, or threaten material injury to, a U.S. industry. On April 27, 2017, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of silicon metal from Australia, Brazil, Kazakhstan, and Norway.<sup>24</sup>

## **VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.<sup>25</sup> Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

### **A. Tau-Ken Temir**

Tau-Ken Temir reported having several cross-owned affiliated companies in its affiliation response.<sup>26</sup> As noted above, we requested that Tau-Ken Temir provide a full response to the

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<sup>21</sup> See *Initiation Notice*, 82 FR at 16359.

<sup>22</sup> See Memorandum, “Release of Results of U.S. Customs and Border Protection (CBP) Data Query,” dated April 26, 2017.

<sup>23</sup> See *Initiation Notice*, 82 FR at 16359.

<sup>24</sup> See *Silicon Metal from Australia, Brazil, Kazakhstan, and Norway*, 82 FR 19383 (April 27, 2017).

<sup>25</sup> On June 29, 2015, the Trade Preferences Extension Act of 2015 made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Accordingly, the amendments apply to this investigation.

<sup>26</sup> See Tau-Ken Temir AFFR.

Department's questionnaire on behalf of itself as well as any of its affiliates with which Tau-Ken Temir was potentially cross-owned. We specifically directed Tau-Ken Temir to file complete responses to the Department's questionnaire on behalf of both its parent company, Tau-Ken Samruk, and its affiliated quartz supplier, Silicon Mining.<sup>27</sup> Despite our explicit directions to provide this information for Tau-Ken Samruk and Silicon Mining, Tau-Ken Temir failed to do so. Instead, Tau-Ken Temir responded to the Department's questionnaire only on its own behalf, repeating its contention that it is not cross-owned with either Tau-Ken Samruk or Silicon Mining, and, as a result, it did not need to provide a questionnaire response for either entity.<sup>28</sup>

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>29</sup>

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

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<sup>27</sup> See SAFFQ; *see also* Letter from the Department, "Countervailing Duty Investigation of Silicon Metal from Kazakhstan," dated May 16, 2017 ("Accordingly, Tau-Ken Temir's response to the CVD questionnaire, including responses from the cross-owned affiliates identified in the Department's May 3, 2017, supplemental questionnaire, is now due no later than 5:00 p.m. Eastern Time (ET) on Thursday, May 25, 2017.")

<sup>28</sup> See Tau-Ken Temir May 15, 2017 SAFFR at 16, 30.

<sup>29</sup> See *Countervailing Duties; Final Rule*, 63 FR 65347, 65401 (November 25, 1998) (*CVD Preamble*).

The U.S. Court of International Trade has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>30</sup>

We preliminarily determine that Tau-Ken Temir, Tau-Ken Samruk, and Silicon Mining are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through Tau-Ken Samruk's common ownership and control of Tau-Ken Temir and Silicon Mining. In its initial and supplemental affiliation responses, Tau-Ken Temir stated that it was wholly owned by its parent company, Tau-Ken Samruk.<sup>31</sup> Tau-Ken Temir also indicated that Tau-Ken Samruk owned 90 percent of Silicon Mining, a company which provides Tau-Ken Temir with quartz, an input in the production of silicon metal.<sup>32</sup> The Department's regulations state that companies are cross-owned where one company could use or direct the assets of another as it would its own and that this standard "will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

Tau-Ken Temir asserts that it cannot "use or direct the individual assets of {Tau-Ken Samruk}, or vice versa," because the "level of interference" of its parent company is limited by charter and "includes only general oversight and approval of internal regulations and rules."<sup>33</sup> However, Tau-Ken Samruk's complete ownership of Tau-Ken Temir leaves no doubt that "the interests of two corporations have merged," as their ownership is identical.<sup>34</sup> Moreover, even if, as Tau-Ken Temir suggests, Tau-Ken Samruk does not currently use or direct its individual assets, that does not mean that Tau-Ken Samruk cannot do so. Therefore, because Tau-Ken Samruk holds a majority ownership interest in both Tau-Ken Temir and Silicon Mining, we preliminarily find that all three are cross-owned pursuant to our regulations.<sup>35</sup>

Furthermore, both of Tau-Ken Temir's cross-owned companies meet the requirements of our attribution rules. First, Tau-Ken Samruk is the cross-owned parent company of Tau-Ken Temir, and, thus, pursuant to 19 CFR 351.525(b)(6)(iii), we would attribute any subsidy received by Tau-Ken Samruk to the consolidated sales of both companies. Second, Silicon Mining is a cross-owned input supplier which provided quartz to Tau-Ken Temir during the POI. Accordingly, pursuant to 19 CFR 351.525(b)(6)(iv), we would attribute any subsidies that Silicon Mining received to the sales of Silicon Mining and Tau-Ken Temir (net of intercompany sales). Thus, as noted above, because of the potential need to attribute subsidies received by

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<sup>30</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>31</sup> See Tau-Ken Temir May 15, 2017 SAFFR at 8 (correcting the bracketing of Tau-Ken Temir AFFR at 3).

<sup>32</sup> See Tau-Ken Temir SAFFR at 8, 10, 14.

<sup>33</sup> See Tau-Ken Temir SAFFR at 13.

<sup>34</sup> See *CVD Preamble*, 63 FR at 65401.

<sup>35</sup> Tau-Ken Temir also argued that it cannot be cross-owned with Tau-Ken Samruk or Silicon Mining because those companies are government-owned. See May 15, 2017 SAFFR at 16, 30. However, Tau-Ken Temir later argued that Tau-Ken Samruk, the parent of both Tau-Ken Temir and Silicon Mining, does not act as a government authority or exercise government functions; rather, according to Tau-Ken Temir, Tau-Ken Samruk operates independently from the GOK. See Tau-Ken Temir's June 12, 2017 Opposition to the Petitioner's New Subsidy Allegations at 2-3; Tau-Ken Temir's June 26, 2017 Reply to the Petitioner's Response Tau-Ken Temir's Opposition at 1-2. Thus, Tau-Ken Temir has made conflicting arguments on the record regarding Tau-Ken Samruk's status as a government-owned entity.

Tau-Ken Samruk and/or Silicon Mining to sales by Tau-Ken Temir, the Department requested that Tau-Ken Temir submit a complete CVD questionnaire response on behalf of each company.

However, Tau-Ken Temir refused to provide us with necessary information that we not only specifically requested but also are required to analyze whether Tau-Ken Temir's cross-owned companies received any countervailable subsidies and how to attribute such subsidies. Thus, Tau-Ken Temir withheld information that was specifically requested by the Department and significantly impeded this proceeding by preventing the Department from determining whether Tau-Ken Samruk or Silicon Mining received any subsidies that should be allocated over Tau-Ken Temir's sales. Accordingly, we preliminarily find that we must rely on facts otherwise available in accordance with sections 776(a)(1) and (2)(B)-(C) of the Act.

In selecting from among the facts available, the Department preliminarily determines that an adverse inference is warranted, pursuant to section 776(b) of the Act. Tau-Ken Temir refused to submit a response to the Department's CVD questionnaire on behalf of Tau-Ken Samruk or Silicon Mining, despite being cross-owned with both parties and the Department's specific instructions in the Department's supplemental questionnaire that it do so and the Department's letter granting Tau-Ken Temir an extension of time for its questionnaire response. Tau-Ken Temir should have access to the requested information, yet it failed either to provide the information or explain why it could not do so. Consequently, we preliminarily find that Tau-Ken Temir failed to cooperate to the best of its ability and significantly impeded this investigation and, therefore, that adverse inferences are warranted to determine whether Tau-Ken Temir received a benefit, and the amount of that benefit, for each program under investigation.<sup>36</sup>

## **B. GOK**

Regarding the information contained in the GOK's initial questionnaire response, we examined this submission and preliminarily determined that the GOK adequately responded in its initial questionnaire response to our questions regarding the allegations of tax exemptions for Tau-Ken Temir due to its location in a special economic zone (SEZ); thus, we preliminarily find that we are able to rely on the GOK's initial questionnaire response for purposes of the SEZ allegations. Based on the information in the GOK's initial questionnaire response, we find that the corporate income tax exemption, property tax exemption, land tax and land use fee exemption, and customs duty exemption programs, all of which are related to Tau-Ken Temir's status as a member of an SEZ are: (1) specific pursuant to section 771(5A)(D)(iv) of the Act because by law the programs are only available to enterprises that are engaged in particular industries and located within the geographical region of the SEZ, which is under the control of the GOK; and (2) constitute financial contributions pursuant to section 771(5)(D)(ii) of the Act because the GOK forgoes tax revenue that is otherwise due.<sup>37</sup>

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<sup>36</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) ("Compliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.").

<sup>37</sup> See GOK June 1, 2017 IQR at Standard Questions Appendix; Tax Program Appendix; and Annexes 9-12.

We do find preliminarily, however, that the GOK's initial questionnaire response was deficient under section 782(d) of the Act with respect to questions pertaining to the allegation that the GOK provided electricity to Tau-Ken Temir for less than adequate remuneration (LTAR). Furthermore, we find that the GOK subsequently failed to provide a complete response to the Department's supplemental questionnaire by the deadline set by the Department.<sup>38</sup> By not providing a timely response to our supplemental questionnaire, we preliminarily find that the GOK has significantly impeded this proceeding with regard to the allegation that Tau-Ken Temir received electricity for LTAR and failed to provide information necessary to our analysis. Consequently, pursuant to sections 776(a)(1) and (2)(B)-(C) of the Act, we are resorting to facts otherwise available regarding specificity and financial contribution for this program in this preliminary determination.

Further, in selecting from among the facts available, we preliminarily find that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by failing to provide a timely response to the Department's supplemental questionnaire, the GOK failed to cooperate the best of its ability to comply with the Department's requests for necessary information in this investigation. Consequently, we preliminarily find that the electricity for LTAR program constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act and is specific pursuant to section 771(5A)(D)(iii)(1) of the Act.

### **C. Selection of the Adverse Facts Available Rate**

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>39</sup> The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>40</sup>

In this preliminary determination, the Department is examining all programs at issue in this investigation.<sup>41</sup> Because Tau-Ken Temir and the GOK failed to act to the best of their abilities, as discussed above, we find that adverse inferences are warranted to ensure Tau-Ken Temir and

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<sup>38</sup> See Department Letter, "Countervailing Duty Investigation of Silicon Metal from Kazakhstan," dated July 13, 2017 (rejecting the GOK's supplemental questionnaire response and removing it from the record); *see also* Memorandum, "Silicon Metal from the Republic of Kazakhstan: Ex-Parte Telephone Call with an Official from the Government of Kazakhstan," dated July 13, 2017; and Department Letter, "Countervailing Duty Investigation of Silicon Metal from the Republic of Kazakhstan," dated July 25, 2017 (declining to reconsider rejection).

<sup>39</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination*, 78 FR 50389, and accompanying Issues and Decision Memorandum (IDM) at Section IV, "Use of Facts Otherwise Available and Adverse Inferences" (August 19, 2013).

<sup>40</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 870.

<sup>41</sup> See Section VII.E., *infra*, "Subsidy Rate Chart."

the GOK do not obtain a more favorable result than if they had fully participated in this investigation.

When selecting AFA rates in a CVD investigation, section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.<sup>42</sup> When selecting an AFA rate in an investigation, we first determine if there is an identical program in the investigation with a rate above-*de minimis*, or if not in the investigation, in previous cases from the same country, and we apply the highest calculated rate for the identical program.<sup>43</sup> If there is no identical program, we then determine if there is a similar/comparable program (based on treatment of the benefit) in any proceeding from that country and apply the highest calculated rate for a similar/comparable program.<sup>44</sup> Where there is no comparable program, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.<sup>45</sup>

Given that the instant proceeding is the first CVD investigation involving Kazakhstan, we do not have any previously calculated rates for identical or similar programs in Kazakhstan to apply as AFA for any of the alleged subsidy programs.

However, we are able to calculate an AFA rate for the exemption from income tax program for companies located in an SEZ. Specifically, the GOK reported that the standard income tax rate for corporations in Kazakhstan in effect during the POI was 20 percent<sup>46</sup> and, consistent with our practice, we applied an adverse inference that Tau-Ken Temir paid no income tax during the POI because of its income tax exemption.<sup>47</sup> Given the information on the record, the highest benefit Tau-Ken Temir could have received from this income tax program in Kazakhstan is 20 percent. There is no other factual information on the record which contradicts this conclusion. Accordingly, we are preliminarily applying 20 percent as the AFA rate for this program.

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<sup>42</sup> See also, e.g., *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying IDM at "Selection of the Adverse Facts Available;" *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions PRC Final Determination*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies;" and *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) (*Steel Wire Investigation*), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences."

<sup>43</sup> See, e.g., *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at 8-9.

<sup>44</sup> *Id.*

<sup>45</sup> See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying IDM at 13-14.

<sup>46</sup> See GOK June 1, 2017 IQR at 20, Annex 10.1 at Chapter 16, Article 147.

<sup>47</sup> See e.g., *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*WLP Turkey Final*), and accompanying IDM at 5; *Aluminum Extrusions PRC Final Determination* IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

For each of the remaining alleged subsidy programs in Department's initial CVD questionnaire, we are following our AFA hierarchy, and applying the highest above-*de minimis* rate used for any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use. Accordingly, we are preliminarily applying, as AFA, the only above-*de minimis* rate we have for any subsidy program involving Kazakhstan: the 20 percent AFA rate for the exemption from income tax program for companies located in an SEZ.

Finally, we address the debt forgiveness program in detail in the New Subsidy Allegation Memorandum.<sup>48</sup> The GOK stated that the Investment Fund of Kazakhstan (IFK) purchased the debt obligations of Silicium Kazakhstan LLP (Silicium Kazakhstan), and the IFK appears to continue to hold this debt.<sup>49</sup> According to the GOK, subsequent to the purchase, the IFK separated Silicium Kazakhstan's debts from its assets to form "an enterprise not burdened by debt obligations," Kremnyi Kazakhstan.<sup>50</sup> The GOK stated that Kremnyi Kazakhstan was then sold to Tau-Ken Samruk, which "joined" the company with Tau-Ken Temir.<sup>51</sup> However, neither the GOK nor Tau-Ken Temir provided: 1) a detailed description of the sale of Silicium Kazakhstan to the IFK or ultimately to Tau-Ken Samruk; nor 2) any documentation to support these sales.

Therefore, as facts available, we preliminarily find that Silicium Kazakhstan's debt has been forgiven, and that such debt forgiveness is a financial contribution pursuant to section 771(5)(D)(i) of the Act. Furthermore, we preliminarily find that this program is *de facto* specific pursuant to section 771(5A)(D)(iii)(1) of the Act because the actual recipients are limited to a certain enterprise. We intend to seek additional information on this subsidy program following the issuance of our preliminary determination.

Moreover, regarding the benefit received by Tau-Ken Temir, the company failed to provide any information regarding Silicium Kazakhstan's debt.<sup>52</sup> Therefore, for the debt forgiveness program, we are preliminarily applying, as AFA, the 20 percent AFA rate for the exemption from income tax program for companies located in an SEZ.

#### **D. Corroboration**

As discussed above, section 776(c) of the Act provides that, in general, when the Department relies on secondary information, rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Here, we are only using information obtained during the course of this investigation from the GOK to determine the subsidy rates, *i.e.*, the GOK June 1, 2017 IQR's narrative description of the SEZ program and the Tax Code of Kazakhstan, attached to the response as Annex 10. Because this constitutes primary information,

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<sup>48</sup> See Memorandum, "Decision Memorandum on New Subsidy Allegations," dated July 6, 2017 (New Subsidy Allegation Memorandum).

<sup>49</sup> See GOK NSAR.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See generally Tau-Ken Temir NSAR.

*i.e.*, “information obtained in the course of an investigation,” we do not need to corroborate this information.<sup>53</sup>

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for Tau-Ken Temir to be 120.00 percent *ad valorem*.

#### E. Subsidy Rate Chart

Program	AFA Rate
Provision of Electricity for LTAR	20.00%
Tax Exemptions from SEZ status	
a. Corporate Income Tax Exemption	20.00%
b. Property Tax Exemption	20.00%
c. Land Use Tax and Land Use Fee Exemption	20.00%
d. Customs Duties Exemption	20.00%
Debt Forgiveness	20.00%
<b>Total</b>	<b>120.00%</b>

#### VIII. CALCULATION OF THE ALL-OTHERS RATE

Section 703(d)(1)(A)(i) of the Act states that the Department shall determine an estimated individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with Section 705(c)(5)(A)(i), determine a single estimated country-wide “all-others” rate, applicable to all exporters and producers not individually investigated and to new exporter and producers. Section 705(c)(5)(A)(i) of the Act states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for the exporters and producers that were individually investigated, excluding any rates that are *de minimis* and/or any rate based entirely on facts available. Section 705(c)(5)(A)(ii) of the Act, however, provides that, if the countervailable subsidy rates established for all individually examined exporters/producers are *de minimis* or based entirely under section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters/producers that were not individually-examined, including averaging the weighted-average countervailable subsidy rates determined for the individually-examined exporters and producers.

In this case, the countervailable subsidy rate calculated for Tau-Ken Temir is based entirely on facts available pursuant to section 776 of the Act. Accordingly, we are using “any reasonable method” to establish the all-others rate. Specifically, we find that it is reasonable to rely on the rate established for Tau-Ken Temir as the all-others rate, particularly because there is no other

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<sup>53</sup> See section 776(c) of the Act.

information on the record that can be used to determine an all-others rate. This method is consistent with the Department's practice.<sup>54</sup>

## IX. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

8/7/2017

X



Signed by: CAROLE SHOWERS

Carole Showers  
Executive Director, Office of Policy  
performing the duties of  
Deputy Assistant Secretary for Enforcement and Compliance

<sup>54</sup> See, e.g., *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 81 FR 20619 (April 8, 2016), and accompanying Preliminary Determination Memorandum at 16-17, unchanged in *Circular Welded Carbon-Quality Steel Pipe From Pakistan: Final Affirmative Countervailing Duty Determination*, 81 FR 75045 (October 28, 2016) (assigning the sole mandatory respondent's rate, which was based on AFA, as the all-others rate); *Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying IDM at Comment 1; *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468, 64470 (October 22, 2012) (averaging two total AFA respondents' rates together to determine the all-others rate); and *Certain Potassium Phosphate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry*, 75 FR 30375 (June 1, 2010) (assigning the rate for three total AFA companies as the all-others rate).